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Attorney for Defendant
EXERGEN CORP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

SAN FRANCISCO TECHNOLOGY INC.,

Plaintiff,

THE GLAD PRODUCTS COMPANY, BAJER DESIGN & MARKETING INC., BAYER CORPORATION, BRIGHT IMAGE CORPORATION, CHURCH & DWIGHT CO. INC., COLGAGE-PALMOLIVE COMPANY, COMBE INCORPORATED, THE DIAL CORPORATION, EXERGEN CORPORATION, GLAXOSMITHKLINE LLC, HI-TECH PHARMACAL CO. INC., JOHNSON PRODUCTS COMPANY INC., MAYBELLINE LLC, MCNEIL-PPC INC., MEDTECH PRODUCTS INC., PLAYTEX PRODUCTS INC., RECKITT BENCKISER INC., ROCHE DIAGNOSTICS CORPORATION, SOFTSHEEN-CARSON LLC, SUN PRODUCTS CORPORATION, SUNSTART AMERICAS INC..

Defendants.

I, Dr. Francesco Pompei, declare as follows:

1. I am the founder, President, and Chief Executive Officer of Exergen Corporation (“Exergen”), I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

DR. POMPEI DECL IN SUPPORT OF DEFENDANT
EXERGEN CORP.'S MOT TO DISMISS OR SEVER AND TRANSFER
Case No. CV10-00966 JF

2. I founded Exergen Corporation in 1980 to apply principles of heat detection and thermodynamics to a number of commercial problems, including energy loss in buildings, heat detection in industrial applications, and, since the late 1980s, temperature measurement for human medical applications. I am the named inventor on over 60 issued United States patents.

3. Exergen is a privately held company incorporated in the Commonwealth of Massachusetts, having its principal place of business in Watertown, MA, where it employs approximately one hundred people.

4. Although Exergen's thermometers are in high demand, and are sold throughout the country and the world, Exergen has no business operations outside Massachusetts. All of Exergen's employees are located at its Watertown, Massachusetts plant. Exergen owns no property in California and employs no workers in California.

5. Exagen makes and sells temporal artery thermometers, among other products.

6. The Exergen Temporal Artery Thermometer that is the subject of this lawsuit is known as the "Comfort Scanner," which is a TAT-2000C model thermometer specially branded and packaged for sale at Walgreen's stores.

7. Exergen's model TAT-2000C thermometer, including its Comfort Scanner thermometer, are consumer versions of Exergen's TAT-2000 model product.

8. Exergen's Temporal Artery Thermometer has been named as one of the Smartest Products of the Decade by Inc. Magazine (Exhibit 1). Exergen has received numerous awards and accolades for its innovative products, including the New England Small Business Association Award for our Temporal Artery Thermometer in 2002.

9. All Exergen products, including its Temporal Artery Thermometers, are designed, assembled, tested, packaged and shipped at our Watertown facility. The packaging for all Exergen products is designed in Watertown, MA. All decisions regarding the packaging and marking are made in the Watertown facility.

10. On or about March 3, 2010, a party named Jennifer Brinkmeier sued Exergen in the District of Delaware for false patent marking.

11. Exergen's counsel in Delaware has been authorized by me to seek to transfer the Delaware suit to the District of Massachusetts as we maintain no business operations in Delaware.

12. All Exergen relevant documents and witnesses with respect to patent marking are located in, or can be contacted at, Exergen's headquarters in Watertown, MA. Any witnesses who could testify about packaging, labeling, advertising, and sales of the products at issue by Exergen are also be located there.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed at Watertown, Massachusetts this 30th day of June, 2010.

Barry, Ph.D.

Dr. Francesco Pompei

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 30, 2010, all counsel of record who are deemed to have consented to electronic service are being served with a copy of the

**DECLARATION OF DR. FRANCESCO POMPEI IN SUPPORT OF DEFENDANT
EXERGEN CORPORATION'S NOTICE OF MOTION AND MOTION TO DISMISS OR
SEVER AND TRANSFER** via the Court's CM/ECF system per Local Rule 5-4 and General
Order 45. Any other counsel of record will be served by first class mail.

Order 45. Any other counsel of record will be served by first class mail.

/s/ Robert J. Kent

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